

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

August 20, 2009

A meeting of the Board of Environmental Protection was held on Thursday, August 20, 2009 at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler.

Absent: M. Wing Goodale

Staff: Jeff Crawford, Bureau of Air Quality
Beth Callahan, Bureau of Land and Water Quality
Jim Cassida, Bureau of Land and Water Quality

Others: Andy Fisk, Director, Bureau of Land and Water Quality
Jan McClintock, Assistant Attorney General
Cindy Bertocci, BEP Executive Analyst
Terry Hanson, BEP Administrative Assistant

(Meeting adjourned at approximately 12:30 p.m.??)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: PROVIDED BY ANDY FISK, DIRECTOR BUREAU OF LAND AND WATER QUALITY

Retirement: The Department has a number of individuals taking advantage of the incentive for retirement and will be leaving the agency at the end of the month. Some of these individuals include Deputy Commissioner Deb Garrett and water enforcement Director, Dennis Merrill. The Commissioner has hired Jody Breton as the Department's new Deputy Commissioner. Ms. Breton was the former Director of the Natural Resources Service Center and is currently transitioning into her role as the Department's new Deputy Commissioner.

Mr. Fisk noted for the Board that when an individual retires utilizing the offered incentive program, the newly vacated general fund position must remain vacant for 2 years to achieve the desired cost savings associated with this incentive. The Department's retirees include those that held federally funded positions and it is not clear if approval to fill those positions will be granted.

Salmon Lake: The Department issued a general permit to itself for herbicide application to control Eurasian milfoil in Salmon Lake. The appeal period is currently running and the deadline for submission of an appeal is August 31, 2009. While the Department has been working to address questions and concerns associated with impacts to down stream waters, it is possible that an appeal will be submitted.

Board member Frank Woodard asked if the herbicide being applied is 2,4-D.

Mr. Fisk confirmed that the Department's general permit allows for a number of herbicide options; however, 2, 4-D was selected for application in Salmon Lake.

Roxbury Wind: The Department will soon issue a permit approval for the Roxbury Wind Project (Record Hill) for construction of a 22 turbine wind generation facility being developed by Mr. Rob Gardiner and Angus King. The Department anticipates that there will be an appeal of this permit decision related to issues concerning wildlife and noise.

Beaches and No Discharge Areas: The Department has been meeting with EPA to implement no discharge areas along the coast. These designations can only be accomplished with local municipal support and the installation of pump-out facilities. The municipalities of Kennebunkport and Kennebunk have been designated no discharge areas. A citizen group obtained private funding for installation of the pump-out station.

Board member P. Andrews Nixon asked about enforcement associated with the no discharge designation.

Mr. Fisk explained that the Department does not have any direct enforcement mechanism and that individuals are encouraged to use pump-out facilities through educational outreach. Additionally, Mr. Fisk noted that local harbor committees and river commissions are the primary source for education and that pump-out stations are charted on guides and maps. Survey results show a high level of awareness and compliance

with use of pump out stations. Beaches and water quality are being monitored in the Kennebunkport area to determine if use of the pump-out station has improved the water quality in that location.

Legislation: The Department anticipates submitting its legislative proposal to the Governor in the early part of September.

B. COMMENTS FROM THE BEP CHAIR: NONE

C. EXECUTIVE ANALYST COMMENTS:

Uliano: The Board's decision was upheld by the Maine Supreme Judicial Court (Law Court.) Board member Nancy Ziegler indicated a desire for the Assistant Attorney General to discuss the case with the Board. It was noted that the Department's scenic rules were adopted after the Uliano matter to address some of the issues that arose in that and other dock cases. A review of the Department's application of the scenic rules would also be helpful.

Board Contract: Sebago Technics is beginning to review background materials in preparation for assisting the Board in its review of the HoltraChem case.

Rulemaking: The Department and Dept. of Human Health Services will be initiating a joint rulemaking governing certification of environmental testing laboratories.

Poland Spring: Ms. Ziegler requested follow-up information concerning any potential impacts to nearby surface waters from ground water extraction. The Department's project manager supplied the Board with a briefing packet. Board members were encouraged to contact Mr. Fisk directly if they want additional information regarding the results of the monitoring.

Gulf Island Pond (GIP): The Board received a summary with the packet material concerning ongoing water quality monitoring at GIP and a possible alternative to a second bubbler that would involve lowering point source discharge limits to meet water quality standards in the pond. The Department is discussing the matter with the appropriate parties; no decisions have been made. If Board members would like an update from Department staff, we can arrange to have staff attend a future Board meeting.

D. BOARD CALENDAR: Reviewed.

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: None

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS:

The Board voted (8-0-1-1) on a motion to approve consent agenda item 1 as presented
Board members Elizabeth Ehrenfeld, Richard Gould, Sue Lessard, P. Andrews Nixon, Matt Scott, Lisa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member Don Guimond abstained. Board member M. Wing Goodale was absent.

1. BEP MINUTES – May 21, 2009 (approval)

The Board voted (8-0-1-1) on a motion to approve consent agenda item 2 as presented
Board members Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lisa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member Elizabeth Ehrenfeld abstained. Board member M. Wing Goodale was absent.

2. BEP MINUTES – June 18, 2009 (approval)

The Board voted (9-0-0-1) on a motion to approved consent agenda items 3, 4, 5, and 7 as presented.

The vote was taken pursuant to 38 M.R.S. A. §341-D(6).

Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lisa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale was absent.

3. JAMES MONROE JR, Union – Administrative Consent Agreement (BLWQ - Land)
4. J.R. HILL & SONS, INC. Sabattus – Administrative Consent Agreement (BLWQ – Land)
5. PRECISION PAVING, Greenville – Administrative Consent Agreement (BRWM)
7. WE CARE CLEANERS, INC., Kittery – Administrative Consent Agreement (BAQ)

The Board voted (9-0-0-1) on a motion to table consideration of consent agenda item 6 until the next regular meeting and requested additional information concerning penalty calculations and prior consent agreements associated with this facility.

The vote was taken pursuant to 38 M.R.S. A. §341-D(6).

Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lisa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale was absent.

6. MAIETTA ENTERPRISES, INC., West Baldwin – Administrative Consent Agreement (BAQ)

III. Regular Agenda

1. CHAPTER 100, DEFINITIONS REGULATION / AMENDMENT (adoption)

Staff: Jeffrey Crawford, Bureau of Air Quality

The Board voted (9-0-0-1) on a motion to adopt amendments to Chapter 100, Definitions Regulations to update the definition of volatile organic compound (VOC) to reflect the delisting of three compounds by the U. S. Environmental Protection Agency. The VOC compounds proposed for exclusion are: (1) decafluoro-3-methoxy-4-trifluoromethyl-pentane, (2) dimethyl carbonate, and (3) propylene carbonate. The vote was taken pursuant to 38 M.R.S.A. §341-D(1-B) and §585-A.

Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lisa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale was absent.

2. CHAPTER 131 CUTBACK ASPHALT AND EMULSIFIED ASPHALT / AMENDMENT (adoption)

Staff: Jeff Crawford, Bureau of Air Quality

The Board voted (9-0-0-1) to adopt Chapter 131, Cutback Asphalt and Emulsified Asphalt amendments to update the standards for reasonably available control technology (RACT) controls on major VOC emission sources. The amendments prohibit the use of cutback asphalt during ozone season and limit the use of emulsified asphalt to that which contains not more than 6.0 ml of oil distillate for all asphalt paving activities. The vote was taken pursuant to 38 M.R.S.A. § 341-D(1-B), 585-A and the Clean Air Act Amendments of 1990.

Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lisa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale was absent.

3. STATE IMPLEMENTATION PLAN (SIP) – REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT) and APPENDIX A MCCAIN FOODS USA, INC., TATERMEAL FACILITY / AMENDMENTS (adoption)

Staff: Jeffrey Crawford, Bureau of Air Quality

The Board voted (9-0-0-1) on a motion to adopt amendments to the State Implementation Plan (SIP), and to include the McCain Foods USA, Inc. Tatermeal Facility in the Department's submittal to EPA. Amendments to the SIP incorporate reasonably available control technology (RACT) provisions for paving operations as outlined in Chapter 131 to achieve additional VOC emission reductions in nonattainment areas for the 8-hour ozone standard. The vote was taken pursuant to 38 M.R.S.A. §341-D(1-B) and §585-A and Section 182 of the 1990 Clean Air Act Amendment.

Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lisa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale was absent.

4. ARTHUR B. CHOATE // NRPA APPLICATION FOR PIER CONSTRUCTION L-24406-4P-A-N (appeal submitted by Dark Harbor Partners, Harry B. Hollins, Nicholas T. Love, James R. Houghton, and Laura Ault)

Staff: Beth Callahan, Bureau of Land and Water Quality

The Board voted (9-0-0-1) on a motion to deny the appeal submitted by Dark Harbor Partners, Harry B. Hollins, Nicholas T. Love, James R. Houghton and Laura Ault concerning Department approval for construction of a granite crib supported pier, seasonal ramp and float in Islesboro. The vote accepts the draft proposed Board Order as presented and affirms the Commissioner's decision in Department Order L-24406-4P-A-N. The Board voted pursuant to 38 M.R.S.A. Section 341-D(4), 480-A to 480-FF, 06-096 CMR Chapter 310, Wetland and Waterbodies Protection Rules and Chapter 2, Section (24)(B), Rules Concerning the Processing of Applications and Other Administrative Matters.

Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lisa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale was absent.